

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

CITY OF SEATTLE,	)	No. 62371-1-I
	)	
Respondent,	)	DIVISION ONE
	)	
v.	)	
	)	
TIFFANY O'CONNOR,	)	UNPUBLISHED
	)	
Appellant.	)	FILED: <u>April 12, 2010</u>
	)	
	)	

COX, J. -- Tiffany O'Connor appeals an order on RALJ appeal affirming her municipal court conviction for driving with a revoked license. She contends the City failed to carry its burden of proving that her license was revoked at the time of her traffic citation and that the revocation complied with due process. We affirm.

On December 17, 2001, the Department of Licensing mailed O'Connor an "Order of Revocation" by certified mail. The order stated that her driving privilege had been revoked due to a determination that she was a habitual traffic offender. O'Connor requested a hearing.

On April 17, 2002, following a hearing, a DOL hearing examiner ruled against O'Connor and ordered the revocation "reissue[d]". On April 23, 2002, DOL mailed O'Connor a new "Order of Revocation" via certified mail. The order

informed her that the hearing examiner had ruled against her and that her driving privilege was revoked as of April 28, 2002.

On June 26, 2002, O'Connor and a DOL hearing officer signed a "Habitual Traffic Offender Conditional Stay Order Agreement." The agreement stated in pertinent part:

The Hearing Officer has recommended that the revocation of my driving privilege be stayed. This recommendation will become a final action unless I am notified to the contrary within twenty (20) days from the date of this agreement. The stay is subject to the following terms:

. . .

6. I remain in complete compliance with an approved and certified alcohol/drug treatment program . . . .

*Any breach or violation of these terms shall be cause for the Department of Licensing to cancel this stay order and revoke my driving privilege for the original five year or seven year revocation.*

. . .

I have read or have had read to me this agreement for the stay and will comply with each condition.<sup>[1]</sup>

On July 30, 2002, more than 20 days after execution of the stay agreement, the hearing examiner issued another decision. It stated that while O'Connor had entered a treatment program, that program "will not satisfy the statute in regards to the type of treatment required for the stay of the revocation." The examiner checked a box indicating a decision "AGAINST" O'Connor. On the "ORDER" line, she did not check boxes next to the words "PERSONALLY SERVED" and "STAY," but instead checked the box next to "REISSUE."

The Department did not issue another order of revocation. Nor did it mail

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<sup>1</sup> Clerk's Papers at 42 (emphasis added).

O'Connor a copy of the July 30 examiner's decision. Instead, by letter dated July 30, 2002, it informed her that mental health treatment did not comply with the stay requirements, but a substance abuse program would.

On June 15, 2007, police stopped O'Connor for a traffic violation. The City subsequently charged her with first degree "Driving While License Suspended or Revoked." SMC 11.56.320(B). O'Connor moved to dismiss the charge, arguing in part that she received inadequate notice that the stay had been cancelled and the revocation reinstated. The court denied the motion.

At trial, O'Connor testified that she never received the July 30, 2002 letter and was unaware at the time of her infraction that the 2002 stay agreement had been cancelled. The court found O'Connor guilty as charged.

The superior court on RALJ appeal affirmed, stating in pertinent part:

- 1) viewed in the light most favorable to the City, the evidence, especially the July 30, 2002 DOL document, shows that the HTO revocation of defendant's driving privilege was in effect on June 15, 2007;
- 2) the revocation of defendant's driving privilege as an Habitual Traffic Offender complied with due process, the notice that defendant had not complied with the conditions of the stay did not have to be sent by certified mail and defendant was not entitled to another hearing on this issue.<sup>[2]</sup>

We granted O'Connor's petition for discretionary review.

### **SUFFICIENCY OF EVIDENCE**

The primary issue on appeal is whether O'Connor's conviction is supported by sufficient evidence. Evidence is sufficient if, when viewed in a light most favorable to the prosecution, it permits any rational trier of fact to find each

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<sup>2</sup> Clerk's Papers at 106.

element of the crime beyond a reasonable doubt.<sup>3</sup>

To convict O'Connor of the charge in this case, the City had to prove that she drove while her license was revoked for being a habitual traffic offender, and that the revocation complied with due process.<sup>4</sup> It is undisputed that O'Connor's license was revoked due to her habitual traffic offender status, that the original revocation complied with due process, and that the revocation was later conditionally stayed. O'Connor contends, however, that the City failed to prove that it cancelled the stay and reinstated the revocation prior to her traffic citation. We disagree.

Whether O'Connor's license was revoked at the time of her traffic citation turns on whether the Department's July 30, 2002 decision effectively cancelled the stay of revocation. Although that decision certainly could have been clearer, it plainly indicated that O'Connor's treatment program did not satisfy the treatment conditions of the stay. On the "DECISION" line, the examiner checked the "AGAINST" box. On the "ORDER" line, he checked "REISSUE" but not "STAY." Viewed in a light most favorable to the City, the decision was sufficiently clear for a rational trier of fact to find that the stay was dissolved and O'Connor's license was revoked at the time of her traffic citation.

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<sup>3</sup> State v. Joy, 121 Wn.2d 333, 338, 851 P.2d 654 (1993); State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992).

<sup>4</sup> SMC 11.56.320(B) ("A person found to be an habitual traffic offender under Chapter 46.65 RCW, who violates this section while an order of revocation issued under Chapter 46.65 RCW prohibiting such operation is in effect, is guilty of driving while license suspended or revoked in the first degree...."); State v. Dolson, 138 Wn.2d 773, 777, 982 P.2d 100 (1999) ("In a prosecution for driving with a revoked license, the State has the burden to prove that the revocation of the defendant's license complied with due process.").

O'Connor's arguments to the contrary are not persuasive. She contends RCW 46.65.060 requires DOL to issue an order of revocation whenever a stay of revocation is cancelled. That statute provides in pertinent part that when conditions of a stay are violated, "the stay shall be removed and the department shall revoke the operator's license. . . ." RCW 46.65.060. Although the statute requires that the license be revoked, it does not specify either a particular method of revocation or require DOL to issue a second order of revocation. Such a requirement would make little sense since an order of revocation already exists and lifting or cancelling the stay makes that order fully operative. In short, we will not read into the statute a requirement that is not there.

O'Connor also claims that RCW 46.65.065(3) entitled her to notice and a hearing before DOL could cancel the stay. The statute states that, in addition to the offender's status as a habitual traffic offender, revocation hearings may address "whether the terms and conditions *for granting stays* . . . have been met."<sup>5</sup> Nothing in the statute references proceedings for the *cancellation* of a stay.

O'Connor argues in the alternative that the City failed to prove that her license revocation complied with due process. Again, we disagree.

A driver's license cannot be revoked without due process and, as noted above, it is the government's burden in a prosecution for driving with a revoked license to prove that the underlying revocation complied with due process.

Dolson, 138 Wn. 2d at 776-77. Here, it is undisputed that O'Connor received

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<sup>5</sup> (Emphasis added.)

due process when her license was revoked in 2002.

The parties dispute, however, whether she was entitled to, and received, due process before DOL cancelled the subsequent stay and reinstated her revocation. Citing cases holding that a driver's license cannot be revoked in the first instance without notice and a hearing,<sup>6</sup> O'Connor contends she was constitutionally entitled to notice and a hearing before DOL cancelled the parties' stay agreement. But as the City points out, cancellation of a stay agreement is on different constitutional footing:

It is established that retention of a driving privilege is a protected interest under the Fourteenth Amendment and that a license is not to be taken away without procedural due process, which as a general rule calls for notice and hearing. Bell v. Burson, 402 U.S. 535, 91 S. Ct. 1586, 29 L. Ed. 2d 90 (1971); Dixon v. Love, 431 U.S. 105, 97 S. Ct. 1723, 52 L. Ed. 2d 172 (1977); State v. Heath, *supra*; State v. Scheffel, 82 Wn.2d 872, 514 P.2d 1052 (1973). However, this is not a case of retention of a driver's license. *The stay [of revocation] is purely a matter of legislative grace which goes beyond the due process requirements of the state and federal constitutions.* We hold a driver's interest is adequately protected if he is allowed to make application for a stay and have the Department consider his request; this can be accomplished without a formal hearing.

(Emphasis added) Department of Licensing v. Ramirez, 34 Wn. App. 430, 435, 661 P.2d 1009 (1983). Although Ramirez addressed the granting of a stay, as opposed to its cancellation, the court's reasoning applies in both settings. Cf. Mentor v. Nelson, 31 Wn. App. 615, 619-20, 644 P.2d 685 (1982) (driver was not

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<sup>6</sup> See, e.g., Dolson, 138 Wn.2d at 777.

entitled to a hearing prior to the lifting of a stay of suspension issued under RCW 46.20.329 because “the stay of suspension while a driver appeals his case . . . [is] a matter of legislative grace and well beyond the due process requirements of the state and federal constitutions”).

O’Connor has offered no reasoned basis for concluding otherwise. In response to this court’s request for comment at oral argument on Ramirez, she simply reasserted her position that her interest in her license entitled her to notice and a hearing before DOL could cancel the stay. Ramirez and Mentor hold to the contrary, and we are not persuaded to depart from them here.

O’Connor also argues that she was entitled to notice of DOL’s decision *after* it cancelled the stay agreement and that the notice she received by letter dated July 30, 2002, was inadequate. Assuming without deciding that such notice was constitutionally required and that the City had the burden of proving it was provided, we conclude the City carried that burden below.

To satisfy due process, notice must be “‘reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.’” Kustura v. Dep’t of Labor & Indus., 142 Wn. App. 655, 675-76, 175 P.3d 1117 (2008) (quoting Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314, 70 S. Ct. 652, 94 L. Ed. 865 (1950)). Due process is not offended if the defendant has either actual or constructive notice. State v. Perry, 96 Wn. App. 1, 975 P.2d 6 (1999); State v. Dolson, 91 Wn. App. 187, 194-95, 957 P.2d 243 (1998). Constructive

notice occurs when “there exists actual notice of matter, to which equity has added constructive notice of facts, *which an inquiry after such matter would have elicited....*” State v. Vahl, 56 Wn. App. 603, 609, 784 P.2d 1280 (1990) (quoting Black's Law Dictionary 957 (5th ed. 1979)) (emphasis by the court); Perry, 96 Wn. App. at 9.

Here, O'Connor correctly conceded at oral argument that receipt of notice is not at issue. The Department mailed its July 30, 2002 letter to the address listed in its records as her address. Although she was not there due to an alleged domestic violence situation, she had not supplied the Department with an alternate address.

On the same day as its decision cancelling the stay, the Department mailed O'Connor its July 30 letter, stating:

Enclosed is a copy of the blue form submitted by your counselor at Seattle Mental Health. Further review of RCW 46.65.060 states that the revocation may be stayed if the individual has undertaken and followed a course of treatment for alcoholism and/or drug treatment in a program approved by the department of social and health services. Mental health treatment will not satisfy the statute in regards to the type of treatment required for the stay of the revocation.

Involvement in a treatment program for alcoholism and/or drugs would qualify for the stay of the habitual traffic offender revocation.<sup>[7]</sup>

In addition to these facts, O'Connor knew from the stay agreement that a violation of stay conditions would “be cause for the Department of Licensing to cancel this stay order and revoke my driving privilege. . . .” She is also deemed to have been aware of RCW 46.65.060, which provides that when a stay

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<sup>7</sup> Clerk's Papers at 46.

condition is violated, “the stay *shall be removed* and the department *shall revoke* the operator’s license . . . .”<sup>8</sup> Finally, as noted above, she is deemed to have received “notice of facts which would have been discovered upon reasonable inquiry.” Vahl, 56 Wn. App. at 609.

Taken together, the letter and other facts known to O’Connor provided notice that she was in violation of a stay condition and that the Department was required to cancel the stay and revoke her license. Had she been at her address of record, she would have received the letter. Based on what it said, it is reasonable to assume that she would have inquired of the Department about the content of the letter. She would have learned that the stay had in fact been cancelled by the July 30 decision. She could have then pursued any available relief. In sum, there was no violation of due process.

We affirm the superior court’s decision on RALJ.

Cox, J.

WE CONCUR:

Jan, J.

Becker, J.

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<sup>8</sup> (Emphasis added). A defendant is presumed to know the law. See Vahl, 56 Wn. App. at 609.